



April 13, 2012

TO: Mayor and Members of Council

FROM: Denise T. Roth, Interim City Manager *DR*

SUBJECT: Items for Your Information

April 16, 2012 City Council Meeting

Agenda #16, Change Order: Attached is a memorandum from Streets Division Manager Michael Mabe, dated April 10, 2012, regarding a change order to increase the scope of work for resurfacing of streets, which requires Council's approval. This item will be on the agenda at the April 16, 2012 Council meeting.

Agenda #22, Emergency Water Conservation and Restriction Plan: Attached is a memorandum from the Director of Water Resources Steven Drew, dated April 10, 2012, regarding the recommendations for the proposed amendments to Chapter 29.5 of the City's Code on the Emergency Water Conservation and Restriction Plan. The proposed amendments require Council's approval and will be on the agenda at the April 16, 2012, Council meeting.

Follow-up For City Council

Cost of Posting New Signs in Parks: As a follow-up to a request from Councilmember Bellamy-Small at the March 20, 2012, City Council meeting, staff has obtained informal bids for the fabrication and installation of signage, for posting Ordinance 18-24; *Concealed Handguns Prohibited*. We will need approximately 200 signs to post the ordinance at parks and recreation facilities, at an estimated cost up to \$10,000.

City Manager Search Update

Ralph Andersen & Associates have been using their extensive national contacts to focus the recruiting effort. In making these contacts, the search team has targeted those individuals who meet the criteria as defined by the Mayor and City Council, which also included input from other key stakeholder groups, and citizen input captured by a Greensboro Community Survey process. To this date, the outreach and recruiting activities have resulted in 31 applications and resumes from interested candidates. There are 13 more days until the close date of April 23, 2012, to continue aggressively reaching out to potential candidates.

All of the applications will be carefully reviewed and those that meet the recruitment criteria will be identified and subject to a more detailed evaluation. This evaluation will include consideration of such factors as professional experience, and size and complexity of the candidate's current organization as compared to the candidate profile. The screening portion of the candidate evaluation process typically reduces a field of highly qualified applicants to approximately eight (8) to ten (10) individuals, which will be presented to the Mayor and Council on May 1, 2012.

Judge Rules in City's Favor

Attached is a memorandum from Interim City Attorney Jamiah Waterman, dated April 13, 2012, regarding Judge Albright's ruling in the City's favor on the lawsuit Wagner v. City of Greensboro.

Greensboro Fire Department Flag Ceremony

Greensboro Fire Department along with SunTrust Bank will have a Flag Presentation ceremony on April 18, 2012, beginning at noon, at Fire Station 1 at Greensboro's Bravest Walk of Courage. Attached is an agenda for this event.

Four Types of Annexation

Attached is a memorandum from Planning and Community Development Director Sue Schwartz, dated April 12, 2012, providing an overview of the four types of annexation.

Greensboro Performing Arts Center

Attached is an update on the progress for the Greensboro's Performing Arts Center from Ross Harris.

Contact Center Feedback

Attached is the weekly report generated by our Contact Center for the week of April 2, 2012 – April 8, 2012.

Council Small Group Meetings

For the week of April 6, 2012 through April 12, 2012, there were no small group meetings between City Staff and [more than two but less than five] Councilmembers.

Library Incident and Internet Usage Reports

Please find attached the Library Incident Report and the Internet Usage Report for January 1, 2012 – March 31, 2012.

Zoning Commission Meeting Results

Attached is the April 9, 2012, Zoning Commission meeting results.

DTR/mm
Attachments

cc: Office of the City Manager
Global Media



April 10, 2012

TO: Denise T. Roth, Interim City Manager

FROM: Michael Mabe, P.E. Streets Division Manager

SUBJECT: Resurfacing of Streets (Pavement Maintenance)
Contract 2011-027
Change Order #1

Summary

Field Operations Department desires to increase the scope of work in contract 2011-027 that will require approval of a change order by City Council. An agenda memo is being prepared for April 16, 2012, Council meeting as a change order for \$170,000.00.

Background

APAC Atlantic, Inc., a North Carolina Licensed General Contractor, was awarded the contract 2011-027 for Resurfacing of Streets by the City Council on December 13, 2011. It was awarded to the contractor in the amount of his bid, \$1,630,820.64. The contract is scheduled to start in May 2012.

The change order is the result of an unusually mild winter which has resulted in unspent funds budgeted for snow & ice removal. The change order reallocates some of these funds to the resurfacing program to address immediate pavement needs. A 2010 pavement survey conducted by U.S. Infrastructure Inc. rated Greensboro's overall street conditions at 68 (1-100 scale). The average pavement rating of peer NC cities is 80. The 2010 survey identified 290 miles of street in need of resurfacing.

The initial contract included 8.2 miles of resurfacing. The change order represents an additional 1.6 miles of resurfacing. These funds will specifically target local residential streets in Council District 4, which was under represented in the initial contract.

MB

cc: Butch Simmons, Engineering & Inspections Department
Dale Wyrick, Field Operations Department

List of Proposed Streets to be Resurfaced

Street	From	To	District	2010 Pvmnt Rating	Length
Beverly Pl.	Starmount	Madison	4	33	1410'
Brentwood	Starmount	E/W Brentwood	4	80	220'
East Brentwood	Brentwood	Madison	4	0	870'
West Brentwood	Brentwood	Madison	4	0	925'
Forestdale Dr.	Starmount	Madison	4	0	1050'
Knollwood Dr.	Starmount	Madison	4	38	1220'
Starmount Dr.	Holden	Market	4	57	2600'



April 10, 2012

TO: Denise T. Roth, Interim City Manager

FROM: Steven D. Drew, Water Resources Director

SUBJECT: Proposed Recommendations for Amendments to Chapter 29.5
Emergency Water Conservation and Restriction Plan

The City of Greensboro's Emergency Water Conservation and Restriction Plan, Chapter 29.5 of the City Code, was developed in 1998 to address water shortages. Greensboro and many other cities in North Carolina were faced with record-setting drought conditions in 1998, 2001-2002, and 2007-2008. Although the City now has supplemental supplies from Randleman Lake and the interconnections with Burlington and Reidsville, the Plan continues to serve as our emergency response to extreme droughts or major system failures. It also allows the City to pump water from the Haw River to assist in refilling Lake Townsend during a multi-year drought, which is only allowed by the State when the City is under mandatory water restrictions.

To encourage greater planning across the State in response to drought, State General Statute 143-354 provides for State oversight in drought response of local water utilities. The Department of Environment and Natural Resources (NCDENR) is authorized to approve or disapprove Water Shortage Response and Local Water Supply Plans that have not met the minimum criteria established in the new State Administrative Code 15A NCAC 02E 0.607. These standards require modifications to Chapter 29.5 Emergency Water Conservation and Restriction Plan.

The following list represents a general summary of the proposed revisions reviewed by the State:

- Triggering stages of the ordinance are now based on percent of reservoir storage remaining instead of days of water supply remaining; former restriction conditions were studied to determine an equivalent "percent remaining" trigger to ensure that the stages will not be called for sooner or later than they have been in the past.
- Renumbering to eliminate stages 2a and 2b to make the stages easier to understand.
- Adding public notification procedures when water restrictions are enacted or modified.
- Adding a procedure to review variance requests.

In summary, changes added some new procedures and renamed the stages, but no changes were made to the restrictions themselves, or to the evaluation of conditions the City would use to initiate for restrictions.

SD

Attachment: NCDENR WSRP Meets Minimum Criteria.



North Carolina Department of Environment and Natural Resources
Division of Water Resources

Beverly Eaves Perdue
Governor

Thomas A. Reeder
Director

Dee Freeman
Secretary

Steven Drew
Water Resources Director, City of Greensboro
PO Box 1170
Greensboro, NC 27402

March 27, 2012

Subject: WSRP Meets Minimum Criteria
City of Greensboro
PWSID#: 02-41-010

Dear Mr. Drew,

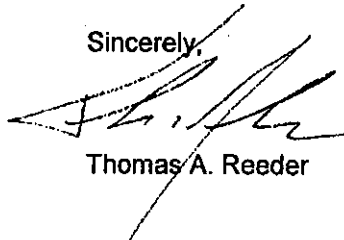
The purpose of this letter is to notify you that our staff has reviewed the information contained in the Water Shortage Response Plan (WSRP) resubmitted by your office. Since all the required information is complete, the WSRP for the City of Greensboro's water system hereby meets the minimum criteria established in North Carolina General Statute 143-355.2 (a) and 15A NCAC 02E. 0607.

The Water Shortage Response Plan must next be adopted by your water system's governing board; a model resolution is enclosed for guidance. Once adopted, a copy of the signed resolution must be submitted to Linwood Peele, Chief of our Water Supply Planning Section, at the address printed at the bottom of this letter. Please note, the WSRP cannot be considered compliant with the requirements of NCGS 143-355(l) until an adopted resolution is received by the Division.

Please also be advised that the review process for Water Shortage Response Plans is separate from the review process for your Local Water Supply Plan (LWSP). An evaluation of all LWSPs is in process and you will be contacted by the Division as soon as this review is complete.

Thank you very much for your efforts to provide your customers with a safe and reliable supply of drinking water. We look forward to continuing to work with you in these efforts. Please contact me at linwood.peele@ncdenr.gov or (919) 707-9024 if we can be of further assistance.

Sincerely,



Thomas A. Reeder

Enclosure

Office of the City Attorney
City of Greensboro



April 13, 2012

TO: Mayor and Members of Council

FROM: Jamiah Waterman, Interim City Attorney

SUBJECT: Judge rules in City's favor, Richard Wagner v. City of Greensboro, 11 CVS 4181

Current and former employees have filed lawsuits challenging the Parks & Recreation Department's practice of reclassifying positions. Position reclassification is a legitimate tool whereby the City's Human Resources Department recognizes when the nature of an employee's position changes. An employee's compensation may be increased if their position is reclassified to a higher classification.

Richard Wagner, a former employee of the Parks & Recreation Department, sued the City alleging that:

1. The Parks & Recreation Department's practice of reclassifying positions was applied discriminatorily;
2. He was denied promotions for retaliatory reasons, and because of his race and gender; and
3. He was subjected to a hostile working environment based on his race and gender.

Mr. Wagner's lawsuit was tried before The Honorable Stuart Albright in February. I am pleased to report that on April 4th The Honorable Stuart Albright ruled in the City's favor. Mr. Wagner's lawsuit was dismissed with prejudice. A copy of the Order is attached.

Feel free to contact me if you should have any questions or concerns about this opinion.

cc: Denise Turner Roth, Interim City Manager

Attachment

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
11 CVS 4181

RICHARD WAGNER,

Plaintiff,

vs.

CITY OF GREENSBORO,

Defendant.

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JUDGMENT

FILED
FEB 14 2012
CLERK OF COURT
SUPERIOR COURT
GUILFORD COUNTY
N.C.

This matter coming on to be heard and being heard before the undersigned Superior Court Judge presiding at the 6 February 2012 civil session of Guilford County Superior Court, upon the parties joint waiver of a jury trial and joint request for a bench trial. The plaintiff was represented by Attorney Nancy P. Quinn and the defendant was represented by Attorney R. Thompson Wright. The Court, after considering the sworn testimony, exhibits, competent evidence, arguments of the parties, relevant case law and proposed orders submitted by both parties, finds by the greater weight of the evidence the following

FINDINGS OF FACT

1. Plaintiff Richard M. Wagner is a citizen and resident of Burlington, North Carolina.
2. The City of Greensboro is a North Carolina municipal corporation.
3. After responding to an advertised position, plaintiff was hired by the city as a Project Specialist in the Parks and Recreation Department, Administration Division, beginning work April 1, 2004, at a starting salary of \$40,776.00 per year. At the time the City hired plaintiff, the plaintiff had a BS degree in landscape architecture from North Carolina A&T State University, obtained in May, 2003. He had worked as a

project manager for his mother's landscaping company, and had worked for six months as a landscape architect intern at Walt Disney Imagineering, and had worked a three month internship for a Landscape Architecture firm in Raleigh. [D Ex 1]

Plaintiff's employment with the City had no definite term, and plaintiff was an employee at will.

4. Duties of plaintiff as a Project Specialist in the Parks and Recreation Department included overseeing construction projects, approving change orders, making sure that construction projects were built to contract specifications with the City, and preparation of design drawings of specific project sites. Initially the plaintiff was supervised by Dan Maxson, the Division Manager for Administrative Services in the Parks and Recreation Department. [D Ex 2]
5. Plaintiff's employee evaluation reviews from his six month probationary review on September 30, 2004 through his fall evaluation on November 28, 2005 were generally positive, and plaintiff received merit increases from 2.5% to 3.5% annually. Dan Maxson conducted these employee evaluations. [P Ex 4]
6. On February 24, 2004, shortly before plaintiff was hired, Candice Bruton was hired as a Planning Specialist in the Administrative Services Division of the Greensboro Parks and Recreation Department at a starting salary of \$36, 144.00. Ms. Bruton responded to an internal advertisement for the job, and was selected by Dan Maxson from the two applicants who applied. [D Ex 13]
7. At the time Ms. Bruton was hired as a Planning Specialist, she had been working as an Assistant Trails Director in the Parks and Recreation Department for

approximately four and a half years, where she was engaged in planning of trail and greenway routes through the City of Greensboro, and other comprehensive planning duties. Ms. Bruton was then enrolled in a graduate program in comprehensive urban planning at the University of North Carolina at Greensboro. She later received an M.A. in Geography, with a concentration in Urban Planning, from UNCG in May, 2005.

8. Ms. Bruton's original duties as Planning Specialist were to assist the Parks and Recreation Administrative Service Manager with the coordination of department-wide strategic and long range planning, as related to the implementation of the Connections 2025 comprehensive master plan and future updates of the Parks and Recreation Master Plan, to assist with the development and administration of the Capital Improvement Plan, serve as Parks and Recreation Department's liaison to other planning efforts in the community, to assist in maintaining GIS inventory of park land and open space, and produce related maps and data and other duties. [D Ex 13]
9. Before Ms. Bruton assumed the duties as Planning Specialist, planning in the department was handled primarily by Dan Maxson, who was then acting as the Manager for Administrative Services. Mr. Maxson had previously been a Division Manager with the title Strategic Planning Manager, but he had assumed the title of Administrative Services Manager in 2002 [P Ex 27]. As a result of the assignment of additional duties and responsibilities by Bonnie Keuster, the Director of the Greensboro Parks and Recreation Department, Mr. Maxson needed additional assistance with planning duties, and the planning function within the department was

expected to become more important, due to the availability of funds from voter-approved bonds.

10. Bonnie Keuster, the Director, had for several years wanted to elevate planning to a higher level of importance in the Parks and Recreation Department's approach to managing the City's parks, recreation centers, trails and other facilities.
11. The job duties of Candice Bruton began to grow in complexity and importance shortly after she became the Planning Specialist. Ms. Bruton became primarily responsible for coordinating strategic and long-range planning functions for the Parks and Recreation Department, whereas she was merely assisting this effort when originally hired. In addition to the duties she originally assumed as Planning Specialist, she began developing requests for proposals and monitoring the work of consultants, conducting internal evaluations and research at the request of other division managers. She began attending meetings of division managers, and implementing and administering the department's one-year master plan. Ms. Bruton began representing the Parks and Recreation Department and other city departments and public agencies, including the Parks and Recreation Commission, City Council, to community groups and neighborhood associations, and began representing the Parks and Recreation Department in the Technical Review Committee and other city and county committees and agencies. [D Ex 14, D Ex 29]
12. Because of Ms. Bruton assuming additional duties and responsibilities, and because the job duties as performed and the actual work being performed by Ms. Bruton, Ms. Bruton's position was reclassified by the Human Resources Department effective

February 1, 2006, to the position of Strategic Planning Administrator, which has a pay grade of E-06. Ms. Bruton's salary after the reclassification and as a result of a system-wide market adjustment, was \$51, 822.00 annually. [D Ex 29]

13. One exception to the City's personnel policy, under which vacant positions are advertised and filled competitively, is the reclassification policy, policy no D-7, allows the change of a position from one classification to another classification based upon the characteristics of the duties currently assigned to the employee. Under this policy, positions may be reclassified on the basis of a change in the nature of the work assigned to the position, changes in the nature of minimum qualifications required to fully perform the job, similarities of the job with other job classifications within the organization, the actual work performed by the incumbent employee and the work for which the incumbent employee is held accountable. [D Ex 31]
14. Before approving a position reclassification, the Human Resources Department of the City reviews the results of a Job Analysis Questionnaire "JAQ", which is analyzed by Human Resources in order to determine whether a reclassification or regrade of a position is justified under the circumstances.
15. Candice Bruton filled out a JAQ describing the work she was currently performing on September 30, 2005. The JAQ was completed by Dan Maxson and Bonnie Keuster on September 30, 2005, and submitted to the Human Resources Department. [D Ex 29]
16. As a result of the Department of Human Resources study of the JAQ and other data regarding the position, Planning Administrator the position of Candice Bruton was reclassified effective February 16, 2006, and her new position became known as

Strategic Planning Administrator. She continued to report to Dan Maxson.

Reclassification of the position for Candice Bruton to Strategic Planning

Administrator reflected the work actually being done by Candice Bruton at the time the JAQ was submitted to Human Resources in October, 2005.

17. In the summer of 2006, Dan Maxson asked Ms. Bruton if she would be willing to supervise Richard Wagner, and she agreed to do so. Mr. Maxson made this request because he had been assigned additional duties and needed someone else to supervise the Project Specialist. Mr. Maxson felt that it would be entirely appropriate for Ms. Bruton to supervise the plaintiff, since they were in a related area. Candice Bruton continued to report directly to Dan Maxson, and Mr. Wagner then reported to Ms. Bruton.
18. Plaintiff was concerned about being supervised by Ms. Bruton, because, at the time of the supervisory assignment, plaintiff's salary was higher than hers. Although plaintiff mentioned to Dan Maxson that he was surprised at the decision to place Ms. Bruton as his supervisor, he did not otherwise protest Candice Bruton becoming Strategic Planning Administrator and acting as his supervisor.
19. On October 20, 2006 plaintiff met in his office with Kathy Cates, a fellow employee, in an effort to discuss difficulties with the Caldwell project. During the meeting, plaintiff became increasingly loud and combative, and Ms. Cates became upset at plaintiff's accusations and other remarks.
20. Ms. Bruton, who overheard much of the confrontation from her nearby office, came out to defuse the confrontation, and she spoke to the plaintiff regarding the substance

and manner of his confrontation with Kathy Cates. [D Ex 19]

21. Ms. Bruton reasonably concluded that the plaintiff had acted unprofessionally in “losing his cool” with Kathy Cates, regardless of the merits of his position on the Caldwell project. [D Ex 19]
22. On October 23, 2006 Dan Maxson and Candice Bruton concluded that disciplinary action should be taken against the plaintiff, and determined that plaintiff should be given an unpaid suspension for the remainder of Monday, October 23 and for the full working day of Tuesday, October 24, 2006. [P Ex 12]
23. The disciplinary action on October 23, 2006 was reasonable and was warranted by the circumstances and behavior of the plaintiff.
24. Plaintiff appealed the disciplinary action to Bonnie Keuster, the Director of Parks and Recreation, because he disputed the characterization in Mr. Maxson in that he “exhibited a lack of professional conduct in meeting with Kathy Cates.” [P Ex 12]
25. On November 28, 2006, Bonnie Keuster, after interviewing the persons involved with the matter, upheld the disciplinary action, and concluded that, at the very least, plaintiff had shown was discourteous and professionally disrespectful treatment of a fellow employee. [P Ex 12]
26. Plaintiff’s annual employee evaluation conducted by Candice Bruton on November 28, 2006 did not specifically refer to his earlier suspension, but noted that plaintiff needed to work on resolving conflict and consensus building within project teams. Such evaluation recommended a salary increase of 1.25%, which was somewhat less than the normal increase to be expected for other City employees. [P Ex 4]

27. In 2006 and early 2007, plaintiff and several black female employees began expressing concerns about promotional opportunities within the Parks and Recreation Department, specifically with regard to division manager positions. Division managers report directly to Bonnie Keuster, the Director of the Parks and Recreation Department, and they typically supervise other employees.
28. In November, 2006, the Parks and Recreation Department had three divisions: Administrative Services, headed by Dan Maxson, (white male), Youth and Community Services, headed by John Hughes (black male), and Parks Gardens and Programs Support, headed by Chris Wilson (white male). [P Ex 6, pg 6]
29. The three Division Managers incumbent as of November, 2006 obtained their positions as a result of appointments and reclassification, rather than as the result of a competitive process. Such appointments by Bonnie Keuster and reclassifications by the Human Resources Department were in accordance with City personnel policies, which permit reorganizations and reclassifications for existing employees. Although no black females held division manager positions, black females likewise received benefits from the City's reclassification process. There is no evidence that black females were more qualified for division manager positions appointed by Bonnie Keuster, than the persons who ultimately filled said positions.
30. In February, 2007, the City of Greensboro Budget and Evaluation Department released its recommendations regarding the organization of the Greensboro Parks and Recreation Department. Among other things, the study recommended that the function of project development and planning not be a separate division, but that such

department report directly to the Director of Parks and Recreation; (P Ex 6, App.10).

31. The job and responsibilities of Candice Bruton as Strategic Planning Administrator continued to grow after she assumed that position. In addition to her other planning duties, she also began cultivating working relationships and partnerships with local funding sources and overseeing work of consultants relating to park development. Her budgetary responsibility for the Capital Improvement Program was in the amount in excess of \$90,000,000.00, in connection with those responsibilities she was developing budget strategies, methods of spending and program objectives. [D Ex 29] This expansion of her duties was consistent with the work which Bonnie Keuster and Dan Maxson assigned to her, and was consistent with the elevated importance of planning, as envisioned by Ms. Keuster.

32. In approximately July, 2007 Bonnie Keuster, with the support of her three division managers, proposed to reorganize the department by creating a new division to be headed by a Planning and Project Development Manager, ("PPDM"). The PPDM position would require five years of directly related planning experience, a four-year degree from an accredited university in recreation or related fields, and with preference of a masters degree in planning or public administration.[D Ex 17] The Greensboro City Manager's Office approved the position to be a new division in Parks and Recreation, with the PPDM to report directly to the Parks and Recreation Department Director rather than the Administrative Services Manager.

33. Upon approval of the new division, the Human Resources Department considered whether to open the PPDM position to competitive applications, or whether the

- position of Strategic Planning Administrator should be reclassified. The Human Resources Department reviewed new JAQs regarding the work and job which Candice Bruton was performing under the working title Strategic Planning Administrator. [D Ex 29] After considering JAQs and investigating the issue further, the Human Resources Department concluded that Candice Bruton was already performing the tasks required of PPDM, and that her job should be reclassified to that of Planning and Project Development Manager.
34. As a result of the Human Resources Department's decision to reclassify Candice Bruton's position, no opening for PPDM was advertised, because there was no vacancy in the position. Ms. Bruton assumed the title of Planning and Project Development Manager, without any substantial change in the job duties which she had already been performing as Strategic Planning Administrator.
35. The reclassification of Candice Bruton's position to PPDM was done in accordance with City policies, and did not violate any personnel policies of the City of Greensboro with respect to the posting and advertising of new positions, since Ms. Bruton was already performing the work of the position.
36. The reclassification of Candice Bruton to PPDM was made on the basis of sound personnel practices, and was not the result of discrimination against plaintiff on account of his race (white) or sex (male).
37. Following the announcement of Candice Bruton's appointment as PPDM, on August 1, 2007, plaintiff filed a grievance which was initially considered by Bonnie Keuster. Plaintiff contended in his grievance that reclassification of Candice Bruton to the

- PPDM position discriminated against him because of his gender, because he contended that he was equally or more qualified for the position. Ms. Keuster acknowledged that there was no competitive application process due to the fact that the classification section of the Human Resources Department determined that Ms. Bruton was already doing most of the responsibilities in the job description and that she should be reclassified to division manager, and was well qualified for the job.
38. Plaintiff appealed Ms. Keuster's decision on his grievance to Bob Morgan, Assistant City Manager, in which he contended that Ms. Keuster had improperly used the reclassification and reorganization to fill management positions, that Ms. Bruton was given preferential treatment, and that he was treated less favorably than other female employees who filed similar grievances.
39. On December 3, 2007 (after plaintiff filed his first EEOC charge), Assistant City Manager Morgan rejected plaintiff's contentions, and concluded that the reclassification and reorganization process was properly used with respect to the PPDM, that there was no evidence to support plaintiff's claim that he had been discriminated against based upon his race and gender, since white males received approximately 45% of the promotions in Parks and Recreation since 1992, that the decision to assign additional duties based upon the business needs of the department were appropriate with City policy and applicable laws, and that there was no evidence that Ms. Bruton was given preferential treatment in assuming the role of PPDM.
40. Following a meeting with several black female employees in the Parks and Recreation Department following the announcement of Candice Bruton as PPDM, the Human

Resources Department conducted a study to determine whether the City's reclassification and reorganization policies were improperly used by Bonnie Keuster in connection with division manager positions since she began her tenure in 1992. Such study did not find any violations of City policy, and did not find that there was evidence of any discrimination or that any African-American female candidates were more qualified for positions than those who eventually filled those positions through reclassifications.

41. On November 6, 2007, plaintiff filed a charge of discrimination before the Equal Employment Opportunity Commission, Charge No. 435-2008-00094 (the "first EEOC charge"), in which he alleged that Candice Bruton was promoted over him to Strategic Planning Administrator and that he was not considered because he was male, that Candice Bruton was promoted to PPDM, despite his educational qualification which "exceeds Ms. Bruton," and that his grievance received less favorable consideration than similar grievances by African-American employees with the same concerns due to the fact that Ms. Keuster "treated them with empathy and promised to make things right."
42. The EEOC determined in a notice dated December 10, 2009, that it was unable to conclude that the information obtained in connection with the First EEOC Charge established a violation of the statutes, without any finding that the City is in compliance, and gave the plaintiff the right to bring a lawsuit within ninety days of his receipt of the notice. Plaintiff timely filed the lawsuit within the time specified in the right to sue letter.

43. The reclassification of Candice Bruton to Strategic Planning Administrator in the summer of 2006 occurred more than 180 days before plaintiff filed the first EEOC charge.
44. While plaintiff worked in the Administrative Services Division, approximately 2 of the employees in that division were male, with the rest (about 15) being female. Dan Maxson, the head of the Administrative Services Division, is a white male.
45. Even if the court could consider “the promotion” of Candice Bruton from the position of Planning Specialist to Strategic Planning Administrator in 2004, such “promotion” (which was in fact reclassification) did not discriminate against the plaintiff on the basis of his gender, but was based upon legitimate business factors such as plaintiff’s prior performance, Ms. Bruton’s superior educational credentials and experience in planning, and her prior job performance, which rendered her better qualified than plaintiff.
46. At the time Candice Bruton was “promoted” to PPDM, effective August 1, 2007, plaintiff’s qualifications for the position did not match those of Candice Bruton, in that Ms. Bruton had a Master of Arts degree in Geography, with a concentration in urban planning, while plaintiff had a bachelor’s degree in landscape architecture. Plaintiff had not yet obtained his licensure as a Registered Landscape Architect, which occurred in February 2008. While plaintiff had on occasion performed some services which could be classified as relating to planning, he did not have the concentrated planning experience as did Ms. Bruton. Plaintiff’s education and practice in landscape architecture were directed more toward specific project sites,

rather than the more generalized and higher level view required in comprehensive planning of the type which was required by the PPDM.

47. While the PPDM position was not posted and no interviews were conducted, the use by the City of Greensboro of the reclassification process was based upon legitimate business needs of the organization, and was properly conducted. The reclassification of Candice Bruton to PPDM was not the result of discrimination on the basis of plaintiff's sex or race.
48. Bonnie Keuster's treatment of plaintiff's grievance was reasonable and fair, and there is no evidence that grievances filed by African-American female employees were treated any differently than the plaintiff or that they received more favorable results from their grievances.
49. While the history of promotions to division manager in the Parks and Recreation Department from 1992 through April 10, 2007 (more than 180 days before the first EEOC charge) may not be the basis for a claim under Title VII, such practices do not reveal a pattern or practice of discrimination against white males in connection with promotion to division manager positions.
50. Plaintiff received satisfactory performance evaluations from Ms. Bruton, his supervisor, on November 9, 2007 and November 20, 2008, and he received merit pay increases of 2.5% and 2.75% respectively. The 2007 performance review was after he had filed a grievance complaining of Candice Bruton becoming PPDM, and the 2008 performance evaluation was after he had filed his First EEOC Charge. [P Ex 4]
51. Following the filing of his grievance and First EEOC Charge, plaintiff continued to be

employed with the City of Greensboro and performed the duties of Project Specialist. The duties of the Project Specialist were essentially unchanged from when plaintiff was originally hired in 2004.

52. Notwithstanding pains taken by Bonnie Keuster and Candice Bruton to avoid any circumstances which could be considered retaliatory or hostile against the plaintiff, the plaintiff began making complaints about actions which he considered to be retaliatory.
53. On January 17, 2008, Dan Maxson forwarded an e-mail attachment showing a number of planning and landscape architect positions open in the Raleigh Parks and Recreation Department, with the comment, "Wow! Did everyone in Raleigh's Planning Division leave or are all of these new positions?" [D Ex 5] Dan Maxson and others in the department often sent information to other employees about job postings in other cities, so that they might know what was going on generally in the profession. There was no intent to intimidate or suggest to the plaintiff that he find employment elsewhere. However, plaintiff unreasonably interpreted the message to say, " You better be thinking about leaving," and sent communication to this effect to the head of the Human Resources Department for the City. {P Ex 20}
54. Candice Bruton and Bonnie Keuster each tried not to do anything which the plaintiff might regard as retaliatory. For example, when on October 22, 2007, Ms. Bruton received notice from the head of Greensboro Fleet Services that the vehicle assigned to the plaintiff was on the under-utilized list, Bonnie Keuster told Ms. Bruton that she did not want to have plaintiff turn in his vehicle at that time, because he had filed a

grievance and might consider it retaliation. [D Ex 22]

55. In 2008, the City vehicle assigned to the plaintiff was returned to Fleet Services due to the low number of miles put on the vehicle, but this decision was not made because plaintiff had filed an EEOC charge, and was based upon the fact that this vehicle was not being utilized sufficiently.

56. A number of relatively minor occurrences constitute the basis of plaintiff's claim that he was subjected to a hostile retaliatory work environment. From time to time, Candice Bruton noted plaintiff's unexplained absence or leaving early from scheduled meetings. [D Ex 18]

57. Candice Bruton complained about plaintiff's spending too much time talking with the custodian in his office, and she suggested that the custodian not be allowed in except to perform his duties. Ms. Bruton's concern was that the conversations were wasting too much business time, which was legitimate and proper. [D Ex 21] This incident did not contribute to a hostile retaliatory work environment for plaintiff.

58. Plaintiff cancelled meetings or rearranged department business in order for him to attend meetings with his attorneys on his discrimination charges [D Ex 23,24], but the City took no disciplinary action against plaintiff for allowing this matter to interfere with his work.

59. Candice Bruton noticed in 2008 that plaintiff had been acting inappropriately and unprofessionally, such as carrying his set of plans to conferences in his daughter's pink "My Little Pony" book bag. Candice Bruton did not bring this matter up with the plaintiff, because she was afraid it would be seen as interfering with his EEOC

claims, even though she would ordinarily have brought it up with another employee had no EEOC claims been pending. (D Ex 24)

60. Because of Ms. Bruton's concerns with plaintiff's behavior, the Employee Relations section of the Human Resources Department had considered whether to initiate a risk assessment on plaintiff to determine if he was a risk to himself or other employees should his EEOC claim not be resolved in his favor, and the Employee Relations Department initiated such assessment in May, 2008. [D Ex 24]

61. Candice Bruton spoke with Bonnie Keuster regarding her concern about plaintiff's appearance and his apparently taking less care with his personal grooming. Bonnie Keuster suggested not pursuing the normal policy, which would involve a conference with the plaintiff. Instead, Ms. Keuster mentioned this concern to Doreen Bryant, and plaintiff's appearance thereafter improved. (D Ex 24)

62. After plaintiff received his Registered Landscape Architect license in early 2008, plaintiff made inquiry with the Human Resources Division as to whether an alternative reward could be paid under City policy for his having completed his professional licensure.

63. When plaintiff asked Bonnie Keuster to approve his application for the alternative reward pursuant to city policy, Ms. Keuster replied that, to her knowledge, no employee had received a monetary reward for acquisition of a special certification, and that the policy had been only to pay for the certification costs, i.e. the costs of the examination for becoming a Registered Landscape Architect. [P Ex 14]

64. Plaintiff made further inquiry with the Human Resources Department, and plaintiff's

application for the alternative reward was eventually approved.

65. Bonnie Keuster's statement to plaintiff that he would not be eligible for the alternative reward was based upon an honest misunderstanding of City policies, and was not an effort to retaliate against him or to create a hostile work environment.
66. Part of the plaintiff's regular duties was to make presentations and give updates on projects on which he was working to the Greensboro Parks and Recreation Commission, which is an independent commission whose members are appointed by the Greensboro City Council, and whose duties are to advise the Parks and Recreation Department on recreational needs in the City of Greensboro.
67. Candice Bruton requested that plaintiff make a presentation at the March 11, 2009 Parks and Recreation Commission meeting, and plaintiff originally agreed to do so.
68. In an e-mail notice sent to Candice Bruton on March 6, 2009, plaintiff informed Ms. Bruton that he would refuse to make a presentation before the Parks and Recreation Commission, for the reason that he had taken offense to a remark made by the Commissioner David Hoggard in a web blog in which Mr. Hoggard had criticized the plaintiff and other EEOC charging parties.
69. Plaintiff provided Candice Bruton with written materials updating his projects, and Candice Bruton had to make the presentation before the Parks and Recreation Commission on March 11 in place of the plaintiff.
70. While the plaintiff may have thought he was exercising his right to show displeasure at the remarks that had been made by Commissioner Hoggard, plaintiff had no right to refuse a reasonable and lawful work assignment by his supervisor Candice Bruton.

71. On March 26, 2009, Candice Bruton, as plaintiff's supervisor, gave notice to the plaintiff of disciplinary action in the form of a written warning for egregious insubordinate behavior due to plaintiff's refusal to accept a reasonable and proper assignment from his authorized supervisor, and for participation in action which disrupts or disturbs the normal operation of the department.
72. As a part of the written warning, Candice Bruton included the statement, "Future acts on your part which violate the City of Greensboro's personnel policy will lead to further disciplinary action up to and including termination." This statement is standard language in any such written warnings, did not indicate any particular intent to terminate the plaintiff, so long as the plaintiff continued to avoid behavior which was in violation of City policies.
73. The written warning on March 26, 2009 was justified under the circumstances, and was reasonable and proper. Such disciplinary action was not in retaliation for plaintiff's filing of his First EEOC Charge more than a year earlier. The inclusion of the standard language regarding the consequences of further disciplinary violations was not retaliatory, nor did it create a hostile work environment for the plaintiff.
74. In plaintiff's spring employee evaluation on March 30, 2009, Candice Bruton found that plaintiff did not meet expectations in judgment decisiveness and time management, reliability, and attitude. In other categories, plaintiff was rated as meeting the expectations of his employment.
75. Ms. Bruton's evaluations and comments were based upon prior incidents where plaintiff had not timely responded to requests for information and e-mails, had failed

to attend scheduled meetings, and had exhibited a poor attitude and an unduly argumentative posture in communication with Ms. Bruton and others on certain issues.

76. Plaintiff felt that the marks in the spring, 1999 evaluation were too low and were inaccurate, and he refused to sign that he had received the evaluation, even though such evaluation was in fact received and reviewed by him. The spring evaluation was not used as the basis for salary increases, and the scores of the length of spring, 2009 evaluation did not affect plaintiff's rate of pay or eligibility for salary increases.
77. The marks reflected in plaintiff's spring, 2009 evaluation by Candice Bruton were honestly based upon her evaluation of plaintiff's work performance, which had been documented by Candice Bruton since the plaintiff's last evaluation, and the spring evaluation was not done in retaliation for plaintiff's having filed his First EEOC charge or opposed what he considered to be unlawful employment practices.
78. The City of Greensboro has not given merit raises to its employees since plaintiff's raise was approved in his November 20, 2008 evaluation, when the plaintiff received a 2.75% merit increase.
79. The plaintiff's March 30, 2009 employee evaluation was not an effort by Candice Bruton or defendant to thwart further merit increases and promotional prospects of the plaintiff. The evaluation did not hasten plaintiff's termination of employment with the City. The spring, 2009 employee evaluation did not constitute retaliation for plaintiff's having filed a previous EEOC charge or having opposed what he contended were unlawful employment practices.

80. On May 12, 2009, plaintiff filed a second charge of discrimination with the Equal Employment Opportunity Commission, charge #435-2009-00636 (“the Second EEOC Charge”), in which he alleged that the written warning on March 27, 2009 and the performance evaluation on March 30, 2009 were taken against him in retaliation for having filed previous EEOC charges of discrimination.
81. Plaintiff received his “right to sue” letter from the EEOC on the Second EEOC Charge shortly after June 30, 2010, and plaintiff thereafter filed his complaint within ninety days from his receipt of the right to sue letter.
82. Plaintiff appealed the written warning for egregious insubordination imposed by Candice Bruton to Dr. Anthony Wade, the Interim Parks and Recreation Director. In the appeal plaintiff contended that, because Candice Bruton had not warned him that his refusal to make a presentation to the Parks and Recreation Commission would be considered insubordinate, that he considered it proper for him to continue in his refusal.
83. Dr. Wade on July 14, 2009, gave written notice to the plaintiff that he had considered the issues raised in his appeal, and that he felt that plaintiff’s refusal of a request by his immediate supervisor to brief the Parks and Recreation Commission based upon his personal animus against one individual was not a justifiable reason, and that the written reprimand taken by Ms. Bruton was a legitimate disciplinary action. [P Ex 16]
84. City policy requires that supervisors respond to employee appeals within ten (10) days, and Dr. Wade’s response to the plaintiff’s appeal was more than ten days after the appeal. However, the delay did not affect any rights of the plaintiff, and the appeal

process was generally fair and equitable, notwithstanding the untimeliness of the response to the plaintiff's appeal.

85. On February 17, 2009, Candice Bruton notified Richard Wagner that the architectural plotter, which was on lease from Hewlett Packard and which lease had expired the previous October, was being phased out, and that GIS had recommended that Parks and Recreation share an architectural plotter with Facilities and Engineering, located in the same building, which would save the City around \$19,000.00 per year. [P Ex 20]

86. Plaintiff responded that he felt that it was essential that the Parks and Recreation Department have access to an architectural plotter, and he opposed removing the plotter from an area near his office. Plaintiff was upset that the GIS Division had performed this assessment without discussing the issue with him. Candice Bruton agreed that it was important to have access to a plotter. [P Ex 20]

87. The plaintiff pursued his contention that the plotter remain in the Parks and Recreation Department for the sole use of Parks and Recreation, and plaintiff conferred with Dr. Anthony Wade to request that the plotter remain. Dr. Wade suggested that plaintiff prepare a memorandum making the business case for the keeping the plotter in Parks and Recreation. At the meeting Dr. Wade did not state that the memorandum was to be delivered only to him, or that the memorandum would contain any confidential information.

88. Plaintiff prepared a memorandum dated June 26, 2009 to Dr. Anthony Wade regarding the reinstatement of the plotter for Parks and Recreation, after the plotter

had been removed earlier that month. The shared plotter was located in the Facilities and Engineering Department, and it was accessible to those in the Parks and Recreation Department who wished to use it.

89. Plaintiff completed a weekly update sheet to Dan Maxson, then his supervisor due to the resignation of Candice Bruton in April, 2009, and plaintiff showed on the memorandum that he had spent a portion of his time that week preparing the proposal for Dr. Wade. [P Ex 17]

90. In a meeting to discuss the weekly work update, Dan Maxson asked plaintiff for a copy of the memorandum delivered to Dr. Wade, because Dan Maxson was to meet with Dr. Wade concerning the plotter and other matters. Plaintiff refused to deliver the memorandum to Dan Maxson, his immediate supervisor, and stated that he felt that he had to ask Dr. Wade for permission. Dan Maxson again asked for the memorandum, and the plaintiff refused to give him a copy. Dr. Wade was out of the office and was not available for immediate consultation. [P Ex 17]

91. At the end of the following day on July 7, 2009 Dr. Wade asked that he provide his immediate supervisor a copy of the plotter document and any related information, and asked that he provide him with access to any documentation or information which he deemed relevant to the operation of his area of responsibility and the operation of the department. [P Ex 17]

92. On July 20, 2009 Dan Maxson met with plaintiff and imposed disciplinary action for plaintiff's refusal to provide a copy of the memorandum he had submitted to Dr. Wade regarding the plotter. The written disciplinary report stated that the plaintiff's

refusal to comply with a reasonable request from his supervisor was insubordination, and was unacceptable behavior in accordance with City policy. Citing the previous written warning for insubordination on March 26, 2009, Mr. Maxson notified the plaintiff that he would be suspended for three days without pay effective immediately, and that further acts on his part which violate the City's personnel policy would lead to further disciplinary action up to and including termination. [P Ex 17]

93. In an additional memorandum, also dated July 20, 2009, and delivered separately, from Dan Maxson to plaintiff, Mr. Maxson increased the suspension from three days to five days without pay, because he had learned that the Fair Labor Standards Act required such a suspension, and plaintiff was notified that he was placed on administrative leave with pay effective immediately and that the suspension without pay would be effective Wednesday, July 22, 2009 through Tuesday, July 28, 2009. [P Ex 17]

94. The disciplinary action taken by Dan Maxson was reasonable and proper, and plaintiff had been insubordinate when he failed to give a copy of the memorandum, which was a public document without any confidential information in it, to his immediate supervisor upon his request.

95. The disciplinary action taken by Dan Maxson on July 20, 2009, was not taken in retaliation for plaintiff's having filed previous EEOC charges or his having opposed what he contended to be unlawful employment practices.

96. Because of concerns from past incidences of disruptive behavior exhibited by the plaintiff, the defendant, prior to the disciplinary conference on July 20, 2009,

convened its Threat Assessment Committee, which determined that, as a precaution, security guards would escort Mr. Wagner from the City premises following the disciplinary conference.

97. Following the disciplinary conference, the City's Chief of Security Michael Speedling and a contract security guard from Langford Protective Services, escorted the plaintiff from the building. Mr. Speedling did not display any weapon, and no weapon from the security guard was ever removed from its holster. Plaintiff was not threatened with armed retaliation. Plaintiff left the premises without struggle or other incident.

98. The precautions taken by the City in having plaintiff escorted from the building were in accordance with its policy regarding personnel matters, and such measures were reasonable precautions against the reasonable foreseeable possibility of disruptive behavior on the part of the plaintiff, in view of plaintiff's past behavior.

99. Plaintiff appealed his July 20, 2009 disciplinary action to Dr. Anthony Wade upon the grounds that his suspension had been increased in order to comply with FLSA, that he should have been permitted to consult with Dr. Wade before handing the plotter memo to Mr. Maxson, and that his 2006 suspension for two days had violated FLSA. Plaintiff did not request a hearing in his July 20, 2009 appeal to Dr. Wade, Interim Parks and Recreation Director. [P Ex 17]

100. Dr. Wade upheld the five-day suspension levied by Dan Maxson by memorandum dated September 1, 2009. In the memorandum, he explained that the increase in the unpaid suspension was necessitated by the FLSA, and that Mr. Maxson's increase in the amount of the suspension did not violate any City policy, and that his other

grounds for appeal were merely speculative as to possible harm that did not come to pass. Dr. Wade found that plaintiff's failure to comply with Mr. Maxson's request to "for a non-confidential document related to a part of his present operation cannot be justified nor defended." [P Ex 17]

101. Plaintiff first requested a hearing on August 25, 2009. Dr. Wade's response to the July 20, 2009 appeal occurred more than ten days following the appeal. However, each of plaintiff's arguments were considered, with the exception of the 2006 FLSA issue, which was addressed in a later appeal. Although City policy was not strictly followed, there was no denial of due process or unfairness in connection with consideration of plaintiff's appeal.

102. Plaintiff thereafter filed an employee complaint/grievance addressed to Bob Morgan, Interim City Manager, dated September 10, 2009, in which plaintiff raised issues concerning the 2006 suspension as being in violation of FLSA, the denial of his right to participate in a appeal hearing, and a ministerial mischaracterization of his suspension as leave without pay. [P Ex 17]

103. By memorandum dated November 25, 2009, Assistant City Manager Denise Turner, who had been assigned the responsibility to respond to plaintiff's complaint/grievance, upheld plaintiff's contention regarding the FLSA in 2006, and agreed that the City would pay the plaintiff for the twenty-four hours at his rate of pay in 2006. Ms. Turner agreed that the plaintiff should have received a hearing with the Department Director, and suggested that the most proper venue for an appeal was with the City Manager's office, at a date to be determined. Finally, Ms. Turner

concluded that his suspension was inadvertently entered as unpaid leave, and noted that the entry had been corrected to accurately reflect that there was a suspension. [D Ex 7]

104. Because the plaintiff was participating in mediation with the EEOC, the appeal hearing that he requested in the City Manager's office was delayed until after the completion of the EEOC mediation. Plaintiff did not contact the City Manager's office to arrange a hearing following the completion of the EEOC mediation process.
105. The consideration of the plaintiff's appeal and any procedural errors which may have occurred, were not in retaliation against the plaintiff because of his filing of previous EEOC charges of discrimination or his opposing what he considered to be unlawful employment practices.
106. The consideration of the plaintiff's appeal from the July 20, 2009 disciplinary action, while it may not have complied with certain city policies regarding timeliness or the right to a hearing, was not unfair and did not deprive the plaintiff of any rights to due process.
107. Following the resignation of Candice Bruton in April, 2009, Dr. Anthony Wade, Interim Parks and Recreation Director, and the remaining three division managers determined to fill the position of Planning and Project Development Manager through a process of public advertisement and interviews, in accordance with City policy for vacant positions.
108. Based upon earlier job descriptions when Candice Bruton filled the position, and consideration of requirements for like positions in other Parks and Recreation

Departments in North Carolina and elsewhere, Dr. Wade and the division managers prepared a list of minimum and preferred qualifications for the position. Preferred qualifications included a masters degree in parks and recreation, planning or public administration, proficiency in ArcMap, Certified Parks and Recreation Professional and AICP Certified Planner. [D Ex 30]

109. Dr. Wade admitted an employment requisition to the Greensboro Human Resources Department for the new position, which reviewed and approved filling the vacancy and the manner of hiring. Advertising of the available position began July 1, 2009, and continued through July 22, 2009. [D Ex 30]
110. After public advertising, the Greensboro Human Resource Department received over thirty applications for the position of PPDM. The Human Resources Department employed its customary scoring system of awarding ten points to each applicant for each of the preferred and minimum qualifications listed in the job posting. [D Ex 32]
111. Plaintiff submitted his application for the position of PPDM, and his application was received and scored by the Greensboro Human Resources Department. Plaintiff met all of the minimum requirements and one of the preferred requirements, and scored a position of 70 in the applicant screening process. [D Ex 32]
112. The Human Resources Department decided to interview the top five candidates, based upon applicant screening, and each of the candidates interviewed had two or more of the preferred qualifications with a score of 80 or above.
113. Because plaintiff did not score 80 in the applicant screening process, plaintiff was not selected for an interview for the PPDM job.

114. After conducting interviews with the top five candidates, the interview committee consisting of Dr. Wade, Dan Maxson, and other division managers, selected Ednasha McCrae, who had scored 80 on the applicant screening process. Ms. McCrae is a black female, and she became employed with the City of Greensboro as the Planning and Project Development Manager.
115. Ednasha McCrae met two of the preferred qualifications, in that she had a masters degree in public administration, and she was proficient in ArcMap. Plaintiff met only one of the preferred qualifications, in that he was proficient in ArcMap. [D Ex 32]
116. Based upon the City's neutral scoring screening system, based upon her qualifications and graduate degree, Ednasha McCrae is better qualified for the job of Planning and Project Development Manager than the plaintiff.
117. Although the plaintiff has maintained that the refusal to include his licensure as a Registered Landscape Architect as a preferred qualification was unfair and improper, it was impossible for the Parks and Recreation Department and Human Resources Department to predict in advance who would apply for the open position and what their qualifications would be. It was within the sound discretion of the City to list as preferred qualifications a graduate degree in public administration or urban planning, as opposed to landscape architecture, which is more oriented to specific project development sites.
118. The City did not interfere with plaintiff's application for the position of PPDM, since the plaintiff submitted his application before his suspension on July 20, 2009, and his suspension was not considered in any way in evaluating the applicants for the

- PPDM position. The omission of Registered Landscape Architect credential from the list of preferred qualifications was not done in an effort to exclude plaintiff from applying for or being considered for the position.
119. The hiring process and the hiring of Ednasha McCrae as PPDM did not discriminate against the plaintiff on the basis of his sex or his race.
120. The hiring process for the position of PPDM in July, 2009 was racially and gender neutral, and did not prefer any candidates of a particular gender or race.
121. On August 19, 2009, plaintiff placed a request for travel to Chicago in order to attend the annual American Society Landscape Architects meeting, which would, among other things, allow him to obtain the continuing education credits necessary to maintain his licensure in North Carolina.
122. Dan Maxson, plaintiff's supervisor at the time, notified plaintiff that the City Manager was continuing a freeze on out-of-state travel due to budget considerations, and that the City Manager's office would make its decision, based upon, among other things, whether there were in-state options for obtaining CEUs.
123. The Office of the City Manager did not approve plaintiff's request to travel to Chicago to attend the conference, and plaintiff was therefore unable to attend the Chicago meeting.
124. Plaintiff was able to obtain his continuing education units in order to maintain his Registered Landscape Architect licensure in North Carolina at a later conference in North Carolina.
125. The defendant's failure to prove plaintiff's travel request to Chicago was based

upon legitimate budgetary concerns, and it was not retaliation against the plaintiff because he had filed previous EEOC complaints or had complained of what he contended to be unlawful employment practices.

126. In late July, 2009, Dr. Anthony Wade and Dan Maxson told the plaintiff that they would try to get an architectural plotter for the exclusive use of the Parks and Recreation Department, and an architectural plotter was in fact installed in the Parks and Recreation Department in approximately October, 2009.

127. The removal of the architectural plotter from the Parks and Recreation Department was undertaken for legitimate budgetary reasons, in that the City expected to save over \$19,000.00, and the removal of the plotter was not done in retaliation against the plaintiff for filing previous EEOC charges and for opposing what he contended to be unlawful employment practices. The plaintiff had access to an architectural plotter in the Facilities and Engineering Department, even though such access was less convenient.

128. On October 22, 2009, plaintiff filed a charge of discrimination with the EEOC, charge no. 435-2009-01111 (the "Third EEOC Charge"), in which he alleged discrimination on the basis of his race and sex in the hiring of Ednasha McCrae as Planning and Project Development Manager, and alleged unlawful retaliation arising out of his July 20, 2009 suspension, the handling of the appeal of his suspension, the denial of his travel request to Chicago, and the removal of the architectural plotter.

129. The plaintiff received his right to sue letter from the EEOC for the Third EEOC Charge shortly after November 30, 2010, and plaintiff filed the same action based

upon the EEOC charge within ninety days of his receipt of the right to sue letter.

130. On February 3, 2010, plaintiff filed a fourth EEOC charge of discrimination, charge 435-2010-00247, which he alleged discrimination on the basis of his race and unlawful retaliation arising out of his being escorted from the workplace on July 20, 2009 by armed guards, the November 19, 2009 evaluation, his failure to receive back pay for the 2006 FLSA violation and his failure to receive his appeals hearing from his July suspension. The circumstances contained in the fourth charge of consideration are not before the court, and the court makes no findings with respect to the charges summarized in the fourth charge of discrimination.

131. Plaintiff has not shown a hostile work environment based upon his race, sex, or based upon retaliation against him for having filed EEOC charges or for having opposed what he considered to be unlawful employment practices.

132. Plaintiff has not shown that he was discriminated against on the basis of his race in connection with the terms and conditions of his employment with the City of Greensboro, or that he was treated differently or less favorably because he is a white male.

Based on the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

1. This court has personal and subject matter jurisdiction over the plaintiff and defendant, except as hereinafter stated.
2. The parties to this action are properly before the court, and each has been

properly designated.

3. Neither party hereto demanded a jury trial and the court is authorized to make findings of fact and conclusions of law to determine the controversy herein.
4. Plaintiff did not establish that he was the victim of discrimination on the basis of his race in the reclassification of Candice Bruton to the position of Planning and Project Development Manager in 2007, and defendant did not violate Title VII, of the Civil Rights Act of 1964, as amended, 42 USC § 2000e ("Title VII") in connection with such employment action.
5. Because Candice Bruton's reclassification into the position of Strategic Planning Administrator in 2006 occurred more than 180 days before the filing of the first EEOC charge, this court may not consider whether plaintiff has established a violation of Title VII with respect to such employment action.
6. If the court could consider the claim relating to Candice Bruton's reclassification as Strategic Planning Administrator, plaintiff did not establish that defendant discriminated against him on the basis of his race in violation of Title VII in connection with such employment action.
7. Because the defendant's appointments to division manager positions in the Parks and Recreation Department from 1992 through the beginning of 2007 occurred more than 180 days before plaintiff filed his first EEOC charge, the court cannot consider whether such actions violated Title VII, and, in any case, the plaintiff was not affected by such actions.
8. Even if the court could consider whether personnel actions which occurred

between 1992 and 2007 were unlawful as applied to the plaintiff, the plaintiff has not established that such actions constitute a pattern of practice of discrimination against the plaintiff because of his race or his sex.

9. Plaintiff is not entitled to recover for his claims of race and sex discrimination as outlined in his First EEOC Charge.
10. The March 27, 2009 written warning for insubordination and the March 30, 2009 employee evaluation were not done in retaliation because of plaintiff's having filed an earlier EEOC charge or plaintiff's having opposed employment practices which he considered unlawful.
11. Plaintiff is not entitled to recover against the defendant for retaliation in violation of Title VII, from matters arising out of plaintiff's second EEOC charge.
12. Defendant did not violate Title VII by creating a hostile work environment for the plaintiff because the plaintiff was white.
13. Defendant did not violate Title VII by creating a hostile work environment for the plaintiff because of the plaintiff's sex.
14. Defendant did not violate Title VII by creating and maintaining a hostile work environment because of actual or threatened retaliation against the plaintiff for having filed earlier EEOC charges or having opposed employment practices which the plaintiff considered to be unlawful.
15. Defendant did not violate Title VII by retaliating against the plaintiff in connection with his July 20, 2009 suspension for insubordination, and the

administrative appeals of grievances relating thereto.

16. As an employee at will with no definite term of employment, the plaintiff has no claim for denial of due process arising out of his employment under 42 USC §1983.
17. Even if the plaintiff could maintain a claim for denial of due process, the process and appeal rights afforded to the plaintiff, while not perfectly in accordance with written City policy, was not so fundamentally flawed as to constitute fundamental unfairness or lack of opportunity for the plaintiff's claims to be considered, so as to constitute a denial of due process to the plaintiff in violation of 42 USC §1983.
18. Violations of the Fair Labor Standards Act are not properly before the court for consideration, except to the extent that such circumstances may constitute unlawful retaliation against the plaintiff for his having filed earlier EEOC charges or having opposed what he considered to be unlawful employment practices.
19. In the event the city violated the Fair Labor Standards Act in suspending the plaintiff, such violations were not in retaliation for plaintiff's having filed earlier EEOC charges, or for opposing employment practices which the plaintiff considered to be unlawful.
20. The defendant did not violate Title VII by discriminating against the plaintiff as a result of his race in the formulation of requirements for the position of Planning and Project Development Manager, the process of filling the position

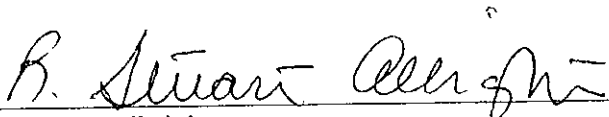
- of PPDM , and the hiring of Ednasha McCray to fill the position of PPDM.
21. The defendant did not violate Title VII by discriminating against the plaintiff as a result of his sex in the formulation of requirements for the position of Planning and Project Development Manager, the process of filling the position of PPDM , and the hiring of Ednasha McCrae to fill the position of PPDM.
 22. The defendant the City of Greensboro did not violate Title VII by retaliating against the plaintiff in connection with the removal of the architectural plotter, the denial of his travel request, or any other respects, and plaintiff is not entitled to recover for unlawful retaliation under Title VII.
 23. Plaintiff is not entitled to recover from the defendant for violations of Title VII as a result of discrimination on the basis of his race, sex, or for retaliation, as outlined in plaintiff's third EEOC charge.
 24. This court does not consider matters raised by the plaintiff's fourth EEOC charge, since matters relating to this charge were not incorporated into the complaint of this action by amendment.
 25. Plaintiff is not entitled to recover from the defendant on the basis of any retaliation claims.
 26. Defendant did not violate Title VII, by maintaining a workplace which was hostile to the plaintiff because of his race or sex, or because of actual or threatened unlawful retaliation.
 27. Defendant did not discriminate against the plaintiff the terms and conditions of his employment in violation of 42 USC § 1981.

28. Plaintiff is not entitled to recover from the defendant on any claim brought pursuant to Title VII.

Therefore, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. That the plaintiff shall have and recover nothing from the defendant for the claims and damages sought in his Complaint, and such Complaint is hereby dismissed with prejudice; and
2. That the costs of this case are hereby taxed against the plaintiff.

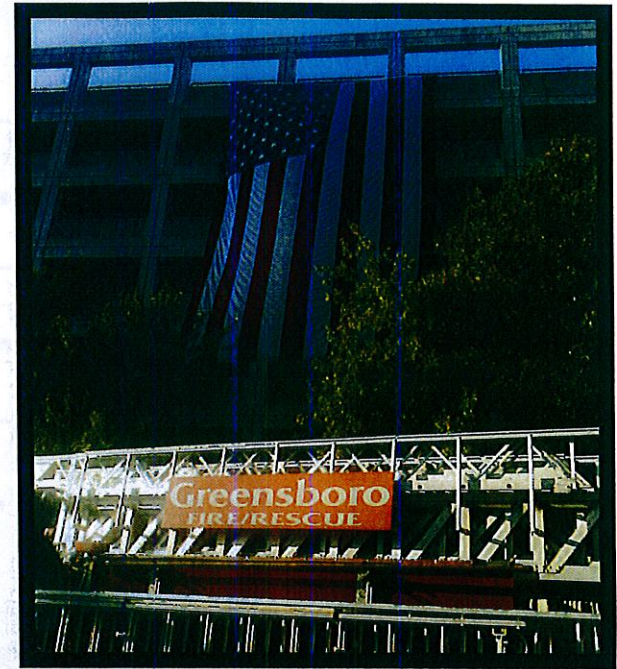
This the 4th day of April, 2012.



R. Stuart Albright,
Superior Court Judge Presiding



**Special Thanks to
SunTrust Bank
"Solid Gives Back"**



**Greensboro Fire
Department**

Flag Presentation

Wednesday, April 18, 2012

Noon

Presentation of Colors	GFD Honor Guard
National Anthem	FEO Robert Johnson
Invocation	Captain Tony Davenport, Chaplain
Welcome	Fire Chief Greg Grayson
Remarks from City Hall	Interim City Manager Denise Turner Roth
Placing of the Honor Stone	Captain Mike Simmons
Guest Speaker	David Stevens, President & CEO SunTrust Bank Central Carolina Region
Military Recognition	Assistant Chief Skip Nix Piper David Thomas
God Bless America	Musician Abby Sutton Director of Service Programming Westover Church





April 12, 2012

TO: Denise T. Roth, Interim City Manager

FROM: Sue Schwartz, FAICP, Director

SUBJECT: Four Types of Annexation

There has been some discussion concerning how cities annex property given changes in the NC General Statutes last year. The legislation made significant changes to one of the four types of annexation. Below is a brief overview.

Background

Prior to changes made in the State Statutes in 1959, all city growth had to be approved by the NC General Assembly and generally only happened in very large tracts every 20 years or more (Greensboro's land area was more than doubled by several such annexations). This made the provision of public services to these large areas expensive and inefficient and discouraged annexations that provide services to new economic development sites outside the city. That change contained specific standards that all cities must use in order to carry out annexations in a reasonable fashion and to insure that services are provided to the areas being annexed. These annexations the associated standards can be further categorized as four distinct types and are briefly summarized as follows:

- 1. *Voluntary Annexation Petition*** – With this type of annexation the property owner submits a signed petition with acreage fees. These are processed through the established procedure since city services can be easily provided and the property is located in close proximity to the primary city limits. A majority of these annexations will be located within Growth Tier 1 on the Growth Strategy Map in the Comprehensive Plan and submitted when an applicant is planning to develop a site and connect onto City water and/or sewer. These annexations can either be contiguous (NCGS 160A-31) or non-contiguous (NCGS 160A-58.1) to the current city limits. In general, satellite annexations must be located within three miles of Greensboro and no closer to another municipality, unless there is an annexation agreement with said municipality. The recent changes the General Assembly made to annexation law had little effect on a City's ability to continue to grow using this method.
- 2. *Utility and Development Agreement and Annexation Petition*** - With this type of annexation the property owner submits a signed agreement/petition with acreage fees. These annexations will most likely be located beyond Growth Tier 1 on the Growth Strategy Map and are submitted when an applicant connects onto City water and/or sewer and all City services cannot be provided at that time . These are then processed when city services can be provided and the property is located in close proximity to the primary city limits. These annexations

can either be contiguous or non-contiguous to the current city limit, same as above. As a result of the recent court challenge, City's Legal staff has modified the format of the agreement/petition to correct the deficiencies contained in the previous format. The changes made to the format of the document will ensure that Greensboro can continue to grow using this method.

3. ***City-Initiated Annexation*** – This is a multi-step-time-dependent process set-out in State Statutes (NCGS 160A-48) to be followed by a municipality. These types of annexations are done when a contiguous area can qualify as “Developed for Urban Purposes.” Although owners do not sign a petition, the public is well notified by Council's adoption of a Resolution of Consideration Map, adoption of a Resolution of Intent, adoption of a Services Report, mailed notices, newspaper advertisement, Public Informational Meeting, and City Council Public Hearing. Most are done when an area is developed and connected onto / or has access to City water and sewer. A recent change in State Statutes makes it much more difficult for cities to use.

This change in State Statutes has added provisions to render the annexation denied if the City receives a petition signed by at least 60% of the property owners in the area, and require the City to install water and sewer lines and connections to all property owners who request service if the City receives a request from a majority of the property owners in the area to be annexed.

4. ***Annexation by Operation of Law*** – This is an automatic result set-out in State Statutes when there are certain types of property located between a tract being annexed and the primary city limits, by way of how an area is defined as “contiguous.” NCGS 160A-31(f) considers an area as contiguous if it is separate by land that is street right-of-way, a creek or river, the right-of-way of a railroad or other public service corporation, land owned by the municipality or some other political subdivision, or land owned by the State of North Carolina. These types of annexations are automatic and will be added to and processed simultaneously with the tract that triggered the property to be included with the annexation.

If you have any questions concerning these different types of annexation or need additional information, please contact me or Steve Galanti 336-373-2144.

SS

MEMORANDUM

TO: DENISE TURNER ROTH
FROM: ROSS HARRIS
SUBJECT: GREENSBORO PERFORMING ARTS CENTER TASK FORCE
DATE: 4/13/2012

UPDATE ON GPAC TASK FORCE

Task Force

- The entire task Force met on April 5 and heard a report from AMS consultant Michele Walter. She presented results of their work to date, which included a review of the GSO market characteristics, competitive inventory, key stakeholder interviews, and potential users and their priorities.
- A media briefing will be held on April 19 at 9:30am at CFGG. This is an opportunity for any member of the press to meet with the Task Force leadership and ask questions.

Economic Impact Committee

- Rick Lusk, Finance Director for the City of Greensboro, spoke to the committee on April 3 to give background on bond financing of projects. The committee was interested in understanding how the process works and what the issues might be as it considers whether a general obligation bond might be part of the financing plan for the PAC.
- The committee met on April 10 to review and discuss the data that was presented by AMS at the April 5 Task Force meeting.
- Dr. Andrew Brod will speak to the committee April 17 about how to measure economic impact. That meeting will begin at 7:30am at CFGG.
- Site visits will take place in Durham, NC on April 13 (DPAC) and Dayton, Ohio on April 16 (Shuster Theater and Victoria Theater)

Arts and Culture Subcommittee

- This committee has not met since the last IFYI update. It will meet again on April 18 at 8:30am at the Cultural Arts Center.

Citizen Engagement

- The first Community Forums were held on March 29 at the Regency Room. Approximately 150 people attended the two forums.
- District Forums have been scheduled in each of the City Council districts to provide additional opportunities for citizens to ask questions and voice their opinions about a PAC in downtown Greensboro. They are scheduled as follows:
 - May 3: Districts 1 & 2, Webb Hall at A&T, 7-9pm
 - April 24: District 3, Cathedral of His Glory, 7-9pm
 - April 26: District 4, St. Andrews Episcopal Church – 7-9pm
 - April 30: District 5, Hemphill Branch Library, 7-9pm
- These new forums are in addition to the Community Forums, which have already been scheduled, as follows:
 - April 21: Holy Trinity Episcopal Church (Haywood Duke Room), Noon-1:30pm and 3:30pm-5:00pm

- May 24: Marriott Hotel, 7:30am-9:00am, Noon-1:30pm, and 6:00pm-7:00pm
- This committee will meet next on April 18 at 5pm at CFGG.

Development/Marketing Committee

- This committee reviewed FAQ's regarding the project for the website, and is adding information about financing of the project.
- The committee continues its research into private financing opportunities.
- The next meeting has not been scheduled at this point.

Advisory Committee

- In the April meeting, Project Manager Ross Harris gave updates on the Community Forums and site visit planning.
- Each committee reported on their progress over the last month.
- Louise Brady gave a brief overview of the project's progress to date at the April 3 City Council meeting.
- The next meeting will be held on May 7 at 8am at CFGG.

Key Dates for April

April 13 – Site Visit to DPAC, Durham, NC

April 16 – Site Visit to Dayton, Ohio

April 17 and 24 – Economic Impact Committee meeting, 7:30am at CFGG

April 18 – Arts and Culture Subcommittee, 8:30am-10:00am at Cultural Arts Center

April 18 – Citizen Engagement Committee meeting, 5:00pm-6:30pm

April 19 – Media Briefing, 9:30am-11:00am at CFGG

April 21 – Community Forums: Holy Trinity Episcopal Church (Haywood Duke Room), Noon-1:30pm and 3:30pm-5:00pm

April 24 – District 3 Forum, Cathedral of His Glory, 7-9pm

April 26 – District 4 Forum, St. Andrews Episcopal Church, 7-9pm

April 30 – District 5 Forum, Hemphill Branch Library, 7-9pm

May 3 – Districts 1 & 2 Forum, Webb Hall at NC A&T, 7-9pm

**Public Affairs
Contact Center Weekly Report
Week of 4/2/12 - 4/8/12**

Contact Center

5207 calls answered this week

Top 5 calls by area

Water Resources

Balance Inquiry – 1019
General Info – 161
Bill Extension – 145
New Sign up – 134
Cutoff Requests – 72

Field Operations

Holiday Schedule – 161
No Service/Garbage – 100
HHW/Landfill/Transfer – 88
Bulk Guidelines – 58
Repair Can/Garbage – 39

All others

Police/Watch Operations – 154
Police Records – 85
Privilege License – 51
Courts – 30
Parking Enforcement – 28

Comments

We received a total of **2** comments this week:

Field Operations – 1 comment:

- Caller just got back from VA hospital. Driver of Solid Waste truck got out and asked if customer had his cans out or was running late. He was very kind and courteous, and was an excellent representative for the City. His customer service was exceptional. "Tell the supervisor to give him a raise in pay! He has an excellent employee working for him, so hang on to him."

Police – 1 comment:

- Voicing opinion for Council – Caller was watching the City Council meeting last night and had some concerns. She watched a speaker from the floor voice concerns about false alarm fines. In the caller's opinion, we shouldn't waive her fees. Let it be a life lesson. She should push back on the alarm company and ask them to help her out with the fees if she needs help. Eight times is a lot. The alarm company did what they were supposed to do and the officers responded as they should have. At the end, it seemed like a veiled threat when the speaker talked about being on different boards and doing a lot for Greensboro. We all do a lot for Greensboro. She shouldn't have said that.

Overall

Calls about privilege licenses continued to increase last week. Calls about the Solid Waste collection schedule for Good Friday also increased. Call volume was very busy through the end of the week.

Greensboro Public Library Internet Usage Statistics
Third Quarter Report
9:00 am 1/1/2012 – 9:00 pm 3/31/2012

Background Information:

- Number of overall web hits – 100% of web hits for the period in question – 414,478,704
- Number of hits on the porn category – (percent)
186,410 (.04%) four hundredths of one percent
- Number of Computer Users
147,543

<i>Breakdown by Month</i>	<i>Overall Web Hits</i>	<i>Hits on Porn Category</i>	<i>% Hits on Porn</i>	<i>Number of Computer Users</i>
<i>January</i>	139,561,547	65,929	0.05%	51,905
<i>February</i>	137,546,708	58,497	0.04%	47,240
<i>March</i>	137,370,449	61,984	0.05%	48,398
<i>Total</i>	<i>414,478,704</i>	<i>186,410</i>	<i>0.04%</i>	<i>147,543</i>

Greensboro Public Library
Library Incident Report- Quaterly Report
1/12/12 thru 3/31/12

Incidents by Category	Central	Benjamin	Glenwood	Hemphill	Kathleen Clay	McGirt-Horton	Vance Chavis	# of Incidents	# of Bans
Accident	1	1	0	0	0	0	0	2	0
Assault	0	0	0	0	0	0	0	0	0
Alcohol	1	0	0	0	0	0	0	1	1
Bomb Threat	0	0	1	0	0	0	0	1	1
Communicating Threat	0	0	0	0	0	0	0	0	0
Computer Misuse	0	0	0	0	0	0	0	0	0
Customer Complaint	1	0	0	0	0	0	0	1	1
Disorderly Conduct	8	0	6	5	0	0	9	28	28
Drug Paraphernalia	0	0	0	0	0	0	0	0	0
Eating	0	0	0	0	0	0	0	0	0
Fire	0	0	0	0	0	0	0	0	0
Indecent Behavior	5	0	1	0	0	1	0	7	3
Littering	0	0	0	0	0	0	0	0	0
Loitering	0	0	0	0	0	0	0	0	0
Lost Property	0	0	0	0	0	0	0	0	0
Medical	1	0	0	0	0	0	0	1	0
Missing Person	0	0	0	0	0	0	0	0	0
Panhandling	0	0	0	0	0	0	0	0	0
Pornography	4	0	2	0	0	0	0	6	6
Potential Problem	2	0	0	0	0	0	1	3	0
Sleeping	11	0	0	0	0	0	0	11	11
Smoking	0	0	0	0	0	0	0	0	0
Theft	8	0	0	0	0	0	1	9	3
Trespassing	4	0	1	0	0	0	3	8	5
Unattended Child	0	0	0	0	1	0	0	1	0
Vandalism	0	0	0	0	0	1	0	1	0
Weapons	6	0	0	0	0	0	0	6	6
Warrant	0	0	0	0	0	0	0	0	0
Grand Total	52	1	11	5	1	2	14	86	65

ZONING COMMISSION RESULTS						
MEETING OF APRIL 9, 2012						
AGENDA ITEM	REQUEST/LOCATION	**PROPOSED USE <small>* (Not binding if not stated as a condition)</small>	ACTION/VOTE	STAFF RECOMMENDATION	STATUS	SPEAKERS
Z-12-04-001	R-3 to CD-RM-18	A maximum of 66 multi-family dwelling units for the elderly	Denied	Denial	Final unless appealed	4 for; 6 opposed
	2823 Randleman		5 to 4			
	Bridgeland Development, LLC for Pope Family Trust et al					
Z-12-04-002	County CU-PD-M to City PUD	All uses permitted in the Planned Unit Development zoning district except bars, nightclubs, brew pubs and sexually oriented businesses	Favorable Recommendation	Approval	May 1, 2012 City Council Meeting	2 for; 1 opposed
	5607 New Garden village Way, 5613 New Garden Village Way and 5597 New Garden Village Drive		7-1-1			
	Chester Brown for Brown Investment Properties, Inc.					
Z-12-04-003	R-3 to CD-RM-12	A maximum of 50 residential dwelling units designed for sale	Approved	Approval	Final unless appealed	1 for; 0 opposed
	3008 Horse Pen Creek Road and 4351 Walking Horse Lane		9 to 0			
	Henry Isaacson for Douglas and Crystal Jones et al					
Z-12-04-004	LI to CD-HI	All uses permitted in the Heavy Industrial zoning district except ammunition manufacture (small arms), animal processing, packing, treating and storage and livestock slaughtering	Approved	Approval	Final unless appealed	1 for; 0 opposed
	1208 and 1220-1224 Rail Street		9 to 0			
	Marc Isaacson for H & T Company and Tru-Cast, Inc.					
Z-12-04-005	County RS-30 to City PI	All uses permitted in the PI zoning District	Continued	Approval	Continued to the May 14, 2012 Zoning Commission Meeting	1 for; 0 opposed
	4229 Short Farm Road		9 to 0			
	City of Greensboro					
Z-12-04-006	R-7 and CD-C-M to CD-C-M	A tourist home (bed and breakfast), restaurant including facilities for banquets, catering and special events, and a vocational training facility for the hospitality industry	Approved	Approval	Final unless appealed	1 for; 0 opposed
	422 Gorrell Street and 725 Plott Street		9 to 0			
	City of Greensboro					

** Please see staff report for full list of conditions and uses

If you have any questions about these results, please contact Frederick Boateng or Mike Kirkman at 336-373-2144